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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,899

03/08/2004

James M. Brugger

53951-121

1653

21890 7590 10/04/2007  
PROSKAUER ROSE LLP  
PATENT DEPARTMENT  
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EXAMINER

BIANCO, PATRICIA

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/796,899

Applicant(s)

BRUGGER ET AL.

Examiner

Patricia M. Bianco

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 & 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant amended claim 12, added new claims 13-18 and cancelled claims 1-6 & 10 in the amendment filed 2/20/2007.

### ***Response to Arguments***

Applicant's arguments with respect to claims 7-9 and 11-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 18 has been renumbered as claim 17.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

With respect to claims 11 and 16, the limitation "microcomputer" is not described in the originally filed Specification. The only recitation of microprocessor is in original claim 11.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Amended claim 12 now recites that the controller is configured such that when *"resistance to flow in the arterial blood line increases" the rate of flow is slowed*. The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is specifically as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

With respect to new claim 13, there is no support for the limitation of the controller connected to receive a pressure signal from the sensor *to control a non-zero rate of flow of said pump* between multiple flow rates to maintain a constant pressure.

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The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is specifically used as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

With respect to new claim 14, there is no support for the limitation of *the controller configured to slow the rate of flow when the pressure drops*. The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is used as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

With respect to new claim 15, there is no support for the limitation of *the controller configured to slow the rate of flow when the pressure increases*. The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is used as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

With respect to new claim 16, there is no support for the limitation of *the microcomputer programmed to compare the pressure signal with a predetermined value*. The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is used as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

With respect to new claim 17 (filed as new claim 18), there is no support for the controller is configured such that when *"resistance to flow in the arterial blood line increases" the rate of flow is slowed*. The only recitation of microprocessor is in original claim 11; nowhere in the specification does applicant disclose that a "microprocessor" is used as the controller, nor does applicant claim the specifics of the recited microprocessor limitations. Thus, there is no description in the originally filed specification to support this limitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

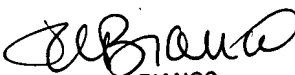
Claims 7-9 and 11-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Collins et al. (US Pat. 6,406,631 B1). Collins discloses a blood dialysis system comprising a filter, arterial and venous blood lines that are connectable to a patient access to convey blood from the patient to the filter and to then return the treated blood to the patient. Further, Collins discloses a pump that is configured to move or convey the blood through the blood lines and filter. Collins further discloses that the pressure of the blood in the blood lines may be monitored through pressure sensors (15 & 16). One of these sensors monitors the arterial pressure and the other the venous pressure. The measured data from the sensors is transmitted to a controller (51). The blood flow measurements are used as a monitoring and controlling parameter of the blood flow through the system as a closed-loop feedback control. The measured rates are compared by the controller to control the system. Collins teaches that the controller monitors the pressure and includes an algorithm; the algorithm may be used to set the rate of the pumps. Collins further discloses that the controlling of pumping rate is based on flow rates through the system, which includes blood flow rates. The controller having a programmable algorithm of Collins is capable of being programmed to allow the pump to be slowed or increased as recited in claims 11-17 insofar as applicant's specification does not specifically point out how its microcomputer is configured differently than what is well known in the art. Thus, it is inherent that the controller of Collins anticipates the claims as recited.

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**Conclusion**

Any inquiry concerning this communication should be directed to Patricia M. Bianco at telephone number (571) 272-4940.

Patricia M Bianco  
SPE  
Art Unit 3772

  
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10/1/07